



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 12, 2015

Orry P. Korb
County Counsel
70 West Tedding Street
East Wing, 9th Floor
San Jose, California 95110-1770

Re: Your Request for Advice
Our File No. A-15-105

Dear Mr. Korb:

This letter responds to your request for advice on behalf of Santa Clara County Supervisor Cindy Chavez regarding her duties under the conflict of interest provisions of the Political Reform Act (the "Act").¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

QUESTION

Are payments for travel, lodging and subsistence made to Supervisor Chavez relating to her trip to Israel for the Educational Seminar in Israel for Pacific Northwest Progressive Leaders subject to reporting and gift limits?

CONCLUSION

Payments for travel, lodging and subsistence are reportable gifts, but not subject to gift limits because they are in connection with a legislative or governmental purpose and/or concern international public policy, and are provided by a 501(c)(3) organization. Any other payments will be reportable gifts subject to gift limits.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

Supervisor Chavez was invited to participate in an “Educational Seminar in Israel for Pacific Northwest Progressive Leaders” from July 18-26, 2015. The trip is sponsored by the American Israel Education Foundation (“AIEF”) and you understand that the sponsorship covers the cost of transportation, lodging and meals during the seminar. AIEF will not cover personal charges, such as gifts and activities not part of the formal program. Participants of the program include elected officials and community leaders.

You understand elected and appointed government officials will meet with Israeli government officials, Palestinian Authority representatives, academics and journalists. The seminar will also include briefings by experts on Middle East affairs. You are informed and believe the seminar will be related to the purpose of exploring policy and security issues affecting both the United States and Israel.

The following information was obtained from information provided in a May 1, 2015, letter to Supervisor Chavez signed by AIEF Executive Director Richard Fishman and from the AIEF website.

- AIEF is a charitable organization affiliated with the American Israel Public Affairs Committee (“AIPAC”) and is organized as a non-profit 501(c)(3) tax exempt organization. The California Secretary of State issued entity number C2741141 to American Israel Education Foundation, Inc. AIEF is the charitable branch affiliated with AIPAC. AIEF is headquartered in Kansas City, Missouri.
- The “Mission Statement” by AIEF is to make grants to support educational programs including Middle East research, educational materials and conferences, and leadership programs for university students. AIEF also states that it funds educational seminars to Israel for members of Congress and other “political influentials.” The AIEF website states, in relevant part: “These AIEF-sponsored trips help educate political leaders and influentials about the importance of the U.S. – Israel relationship through firsthand experiences in Israel, briefings by experts on Middle East affairs, and meetings with Israeli political elite.”
- AIPAC is headquartered in Washington D.C. The California Secretary of State issued entity number C2033470 to the AIPAC. According to AIPAC’s website, the mission of AIPAC is to “strengthen, protect and promote the U.S.-Israel relationship in ways that enhance the security of Israel and the United States. AIPAC’s staff and citizen activists educate decisionmakers about the bonds that unite the United States and Israel and how it is in America’s best interest to help ensure that the Jewish state is safe, strong and secure. Cooperation between the two countries is advantageous for both nations. AIPAC urges all members of Congress to support Israel through foreign aid, government partnerships, joint anti-terrorism efforts and the promotion of a negotiated two-state solution—a Jewish state of Israel and a demilitarized Palestinian state.”

ANALYSIS

We have advised on AIEF education programs and the gift limits in prior advice letters (*McMinn* Advice Letter A-14-171; *Bagneris* Advice Letter A-14-129; *Pasquil* Advice Letter A-14-068.) All the programs are substantially similar in content and the costs that will be covered by AIEF.

Generally, a gift is defined under Section 82028(a) as “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.” In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by local public officials in three ways:

- First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$460 from a single source in a calendar year. (Section 89503.)
- Second, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift of \$50 or more (or gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials’ statements of economic interests. (Sections 87200 - 87210.)
- Third, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$460 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100 & 87103(e).)

Under the Act, generally any travel is presumed to confer some personal benefit on a public official. Consequently, travel costs paid for by a third party generally are reportable gifts under the Act. Therefore, absent an exception, the value of all travel-related expenses will be considered a reportable gift. (Section 82028.)

Under some circumstances, even though a payment for transportation, lodging, and subsistence may be a reportable gift under the Act, the gift is not subject to the Act’s current \$460 gift limit. In this regard, Section 89506(a) provides in pertinent part:

“(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

* * *

“(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit charitable or religious organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.”

You stated that officials participating in the seminar will meet with Israeli government officials, Palestinian Authority representatives, academics and journalists. The seminar will also include briefings by experts on Middle East affairs. In prior advice letters, we have concluded that travel payments for these purposes, such as payments for transportation to Israel and transportation required as part of the formal program as well as related lodging and subsistence, are reasonably related to a legislative or governmental purpose and an issue of state, national, or international public policy and we conclude likewise here.

Please note the following caveats:

1. The payments will still be reportable and could form the basis for a conflict of interest where any governmental decisions have a financial effect on AIEF.

2. Payments made for items other than travel and related lodging and subsistence, such as expenses paid for entertainment purposes will be considered reportable gifts subject to the \$460 gift limit because those items would not be related to a legislative or governmental purpose. You stated that AIEF will not cover personal charges, such as gifts and activities not part of the formal program.

3. Finally, please also note that if AIEF were merely an intermediary for other donors, the gifts would be attributed to the true source, and Section 89506 may not apply. (See Regulation 18945(a).)² We have no facts to suggest that AIEF is merely acting as an intermediary for the payments or that they are provided by other sources.

² Regulation 18945(a) provides: “The person who makes the gift to the official(s) is the source of the gift unless that person is acting as an intermediary. The person is acting as an intermediary for the source of the gift when the gift to the official was provided under any of the following conditions: (1) the person receives a payment from a source and the payment is made to the official after the source identifies the official as the intended recipient of the gift; (2) the person receives a payment from a source after soliciting the payment with the understanding that the payment will be used for the sole or primary purpose of making a gift to an official; or (3) the person receives a payment from a source after the payment was solicited by the official or the official’s agent for the purpose of making a gift to the official.”

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: John W. Wallace
Assistant General Counsel
Legal Division

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